

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WAYNE S. FOSTER,

Plaintiff,

v.

ESSEX COUNTY CORRECTIONAL
FACILITY, *et al.*,

Defendants.

Case No. 2:23-cv-1613 (BRM) (MAH)

WAYNE S. FOSTER,

Plaintiff,

v.

ESSEX COUNTY CORRECTIONAL
FACILITY, *et al.*,

Defendants.

Case No. 2:23-cv-1614 (BRM) (MAH)

ORDER

THIS MATTER is opened to the Court on the Report and Recommendation of the Honorable Michael A. Hammer, U.S.M.J., dated January 23, 2024 (ECF No. 66), wherein he recommends dismissal of plaintiff Wayne S. Foster's ("Plaintiff") complaints with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

In his Report and Recommendation, Judge Hammer cites Plaintiffs' failure to abide by court orders, failure to respond to motions, failure to file an amended complaint, and failure to appear at conferences. (ECF No. 66 at 2.) Plaintiff was advised that failure to respond or appear could result in the issuance of an order to show cause why these matters should not be dismissed with prejudice. (*Id.* at 3 (citing ECF No. 62).) Plaintiff again failed to respond, and an order to

show cause was issued and went without response. (*Id.* (citing ECF No. 64).) Accordingly, Judge Hammer recommends dismissal based on Federal Rule of Civil Procedure 41(b). (*Id.*) And even though “balancing under *Poulis* [*v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984)] is unnecessary” “[w]hen a litigant’s conduct makes adjudication of the case impossible” (ECF No. 66 at 4 (citing *Jones v. N.J. Bar Ass’n*, 242 F. App’x 793, 794 (3d Cir. 2007))), Judge Hammer considered the *Poulis* factors, finding they weigh in favor of dismissal with prejudice (*id.* at 4–7).

The parties were given the opportunity to respond or object to Judge Hammer’s Report and Recommendation by February 6, 2024, pursuant to Local Civil Rule 72.1(c)(2); to date, no party has responded or objected to the Report and Recommendation. Having reviewed the Report and Recommendation; and for good cause appearing that the Court should adopt the Report and Recommendation without modification,

IT IS on this 8th day of February 2024,

ORDERED that the Report and Recommendation (ECF No. 66) is hereby adopted in its entirety and entered; and it is further

ORDERED that Plaintiff’s Complaints in these cases are **DISMISSED WITH PREJUDICE**.

/s/ *Brian R. Martinotti*
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE